



**CHARLOTTE-MECKLENBURG BOARD OF EDUCATION**

**PROCUREMENT SERVICES**  
4511 Monroe Road, Room 212  
Charlotte, NC 28205

**January 25, 2012**

**REQUEST FOR PROPOSAL**  
**RFP# 163-1270**  
**DATA, VOICE, WLAN ELECTRONIC and RELATED EQUIPMENT INSTALLATIONS**

Sealed Proposals subject to the conditions made a part hereof will be received until **February 23, 2012 @ 2:00 p.m., EST (Prevailing Local Time)** for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUERS ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: Indicate firm, and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: Gifford Cordova, Jr., C.P.M.  
Senior Purchasing Agent  
4511 Monroe Road, Room 212  
Charlotte, NC 28205  
980 - 343 – 6615  
[g.cordova@cms.k12.nc.us](mailto:g.cordova@cms.k12.nc.us)

**NOTE:** Questions concerning the specifications in this Request for Proposals will be received until **3:00 pm, February 9, 2012** by e-mailing Gifford Cordova ([g.cordova@cms.k12.nc.us](mailto:g.cordova@cms.k12.nc.us)), CMBE Senior Purchasing Agent. Technical questions will not be accepted after this date and time. General non-technical questions will be accepted until the close of posted RFP timeline. When appropriate, responses will be posted at [www.cms.k12.nc.us/erate](http://www.cms.k12.nc.us/erate) and <http://www.ips.state.nc.us/ips/pubmain.asp>, located under the RFP # being modified.

**It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.**

## OVERVIEW

Charlotte-Mecklenburg Board of Education (CMBE) is seeking proposals for Cisco or equivalent Network Data, Voice, Wireless LAN and related Equipment Installations for schools that qualify for Internal Connections funding for E-Rate Funding Year July 1, 2012 – June 30, 2013.

Partial proposals will not be considered for award.

## E-RATE REQUIREMENTS

Winning Offeror must understand and agree to the following E-Rate terms and conditions:

1. Offeror must be a current participant and continue to participate in the E-Rate program, and to fully cooperate with CMBE to ensure that CMBE receives all of the E-Rate funding for which it applies and to which it is entitled in connection with the Offeror's products.
2. It is anticipated that some or all of the costs associated with this proposal shall be eligible for the E-Rate discount under the Federal Communications Commission (FCC) Universal Service Provision (FCC 97-157). Accordingly, if so, and contingent upon CMBE's receipt of a funding commitment from SLD/USAC, **Offeror will be required to institute a two-tiered billing system and will be required to recover up to ninety percent (90%) of its compensation for such eligible Services directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC.**

For example, if the Offeror is awarded a bid of \$500,000 for either goods or services at a group of CMBE schools at a 90% discount level, the Offeror will be required (after acceptance, testing, and approval) to seek reimbursement from the E-Rate program for the Offeror's share, 90%. CMBE will issue an initial purchase order for only its share, 10% in this example, of the bid, and will provide payment for this amount only. Refer to [www.cms.k12.nc.us/erate](http://www.cms.k12.nc.us/erate) for further clarification.

3. Offeror must submit invoices to the Schools and Libraries Division of USAC when filing for reimbursement. CMBE will receive copies of the Offeror's invoices for reconciliation purposes.
4. Offeror must submit the Service Certification form to the Schools and Libraries Division of USAC when applicable.
5. Final authorization by CMBE for the purchase of any or all goods or services, hereafter described in this document, is contingent upon the award of funding (a funding commitment decision letter) from the Schools and Libraries Division of USAC for the 2012 E-Rate Year.
6. Notification of funding may not be received until after July 1, 2012.
7. No goods or services approved for funding shall begin prior to July 1, 2012.
8. CMBE may, at its discretion, choose to cancel its offer for the purchase of any and all goods or services requested in this bid if E-Rate funding is not approved by USAC, there is a reduction in funding, there are changes in the physical structure of a school (i.e., renovations, demolitions), or for any reason.
9. Offeror shall have current E-Rate Service Provider Certifications.
10. Offeror shall have an E-Rate Service Provider Identification Number (SPIN).
11. Offeror shall have an FCC Registration Number.
12. Offeror shall itemize the cost of E-Rate eligible and ineligible items.
13. CMBE may request service substitutions following the SLD guidelines.
14. Provide CMBE with a copy of the SLD invoice with the breakdown by school.

## CLARIFICATION OF PROPOSALS

1. Qualified proposals will be evaluated and acceptance made based on the best value offered to the Charlotte-Mecklenburg Schools.
2. The Charlotte-Mecklenburg Board of Education may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the work/service proposed, and the Offeror shall furnish to the Charlotte-Mecklenburg Board of Education all such information and data for this purpose as may be requested.
3. The Charlotte-Mecklenburg Board of Education reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fail to satisfy the Charlotte-Mecklenburg Board of Education that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
4. This proposal does not commit the Charlotte-Mecklenburg Board of Education to award a contract or pay costs incurred in the preparation of this proposal.
5. At their option, the evaluators may request oral presentations or discussion with any or all Offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, Offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the Offeror.
6. The Charlotte-Mecklenburg Board of Education reserves the right to accept any offer or to reject all offers with or without cause.
7. Deviations: Any deviations from specifications and requirements herein must be clearly pointed out by bidder. Otherwise it will be considered that equipment offered is in strict compliance with these specifications and requirements, and successful bidder will be held responsible therefor. Deviations must be explained in detail below or on an attached sheet. However, no implication is made by The Charlotte-Mecklenburg Board of Education that deviations will be acceptable. Bidder is advised that the response (or lack thereof) on this question does not take precedence over specific responses or non-responses provided elsewhere in this bid.
8. FIRM BID: Prices and any other entry made hereon by the bidder shall be considered firm and not subject to change or withdrawal.
9. **CLEAN-UP:** Upon completion of the installation, the contractor shall remove and properly dispose of all waste and debris from the installation site. The contractor shall be responsible for leaving the installation area clean and ready to use.

## CMBE OBLIGATIONS

The CMBE Information Systems & Support Department will:

1. Establish the project schedule to include the installation deadline.
2. Verify receipt of all equipment and peripherals prior to installation scheduling if applicable.
3. Provide all equipment and peripherals to be installed if applicable.
4. Provide technical information and assistance for cabling infrastructure and network connectivity.
5. Provide E-Rate labels for equipment.
6. Provide the Quality Assurance checklist and visits to each location.
7. Complete the Service Certification form that the Offeror may need to submit to the Schools and Libraries Division of USAC.

## OFFEROR REQUIREMENTS

The Offeror must:

1. Provide a Distributor Support Letter from Cisco or equivalent, as **Submittal #1**, verifying the contractual relationship with Cisco or equivalent and the products authorized to install, service, and support, and/or have prior experience installing, servicing, and supporting Cisco or equivalent products in an environment similar in size, scale, function, and character to this RFP.
2. Have local (within 50 mile radius of Charlotte, NC) engineering support, capabilities, presence, and have local delivery capabilities.
3. Be able to provide pre-installation and post-installation engineering support, if needed.
4. Commit and identify the names of the dedicated and adequate staff to complete the project at a possible rate of 2 sites per week.
5. Assign and identify a project manager to adhere to the project schedule and work in cooperation with the CMBE Project Manager.
6. Perform services in a timely, complete, and professional manner in accordance with the terms and conditions of this Contract.
7. Assign engineers who are trained and/or certified in the installation, integration, and service of Cisco or equivalent electronics equipment.
8. Register with CMS Vendor System for security background check and obtain a CMS ID badge.
9. **Schedule installations to occur after school hours so there is student instruction interruption**, unless directed otherwise. Proposal/bid for installation must reflect after-hours installation rates.
10. Work under the guidance and direction of the CMBE Project Manager assigned to this project, and coordinate all installations through the CMBE Project Manager.
11. Participate in project planning meetings with the CMBE Information Systems & Support Department.
12. Make site visits in preparation for installation.
13. Take possession and accept responsibility of CMBE provided equipment and peripherals prior to installation. Inventory and verify in writing that all equipment has been received (include part name, model #, serial #).

### ***(Items 14 – 21 refer to Delivery Requirements)***

14. Provide for equipment delivery, to include network electronics and other items, from designated CMBE storage location to the school site.
15. Be able to provide for equipment delivery within 48 hours of notice from CMBE.
16. Use the CMBE Purchase Order and/or other documentation as a reference document for equipment deliveries.
17. Acquire a signature from the school for proof of delivery, on the CMBE provided reference document, and return it to the CMBE designated location.
18. Provide a delivery vehicle that is fully enclosed and insured for the CMBE equipment.
19. Provide insurance on the CMBE equipment while in transit.
20. Deliver to any location CMBE services are offered.
21. Deliver equipment to the specified CMBE location within the building.
22. Record all equipment serial numbers per closet location within each school and submit to CMBE Project Manager. Please submit this to the CMBE Project Manager in an electronic form and in the template provided.
23. Label all E-Rate equipment with labels provided by CMBE Project Manager.
24. Ensure cable installations meet CMBE Information Systems & Support Standards for appearance, neatness, cable dressing, labeling, testing, etc, (see [CMBE Telecommunications Division 27 Specifications](http://www.cms.k12.nc.us/erate) at [Http://www.cms.k12.nc.us/erate](http://www.cms.k12.nc.us/erate)).
25. Notify the CMBE Project Manager of any issues that arise while onsite.
26. Add installation dates to the provided CMBE calendar.
27. Provide scheduling of cutover downtime and communicate with the school, when applicable.
28. Inventory, remove, label and return old equipment/electronics, etc. to the designated CMBE location on the installation completion date.

29. Return any unused new equipment to the CMBE Information Systems & Support Project Manager or other CMBE designated location.
30. Schedule an on-site Quality Assurance review with the Information Systems & Support Department upon completion of work at each project site.
31. Submit bi-weekly reports to the CMBE Information Systems and Support Project Manager.
32. Ensure compliance with all requirements stated or implied by the RFP documents.
33. CMBE will issue individual purchase orders per site receiving equipment. Invoice according to CMBE purchase order(s) received.
34. Invoices should be sent to the CMBE Project Manager, within 30 days after the installation, for verification prior to USAC submittal.
35. Information Systems & Support will submit the invoice for payment.
36. Put the installation date on the invoice.
37. Comply that the invoice will match the CMBE issued purchase order exactly or payments will not be released. The invoice can show the full cost of the services and/or products as a comment section. The purchase order will reflect the CMBE portion of the E-Rate approved funding only. Please see sample: <http://www.cms.k12.nc.us/erate>. **THERE WILL BE NO EXCEPTIONS.**
38. Payment of invoice(s) will not be made until all project close-out documentation has been received by CMBE and determined to be acceptable.
39. It is the Offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned as **Submittal #2**.

## **SCOPE OF WORK, in addition to the requirements**

The following is a general overview of the scope of work required for the Voice Equipment installations. Additional installation details will be delivered after the approval of the application by USAC.

- Visit each site location in preparation for installation, assess the site environment, and identify and communicate any outstanding issues that must be resolved to the Information Systems & Support Department.
- Deliver all needed equipment for the installation.
- Install and configure equipment according to manufacturer's specifications in the assigned room as required.
- Inventory, remove, label and return old equipment/electronics, etc. to the designated CMBE location on the installation completion date.
- Return any unused new equipment to the CMBE Information Systems & Support Project Manager or other CMBE designated location.
- Check revision and upgrade switch code, where needed.
- Update firmware code as needed on new and existing equipment.
- Provide a spreadsheet showing each piece of equipment's part number, serial number and location within the school and wiring closet.
- Provide the information needed to update the CMBE Visio drawing.
- Dispose of all boxes and packing materials, and ensure that Telecommunications Rooms are left clean.
- Ensure the newly installed equipment, cabling, and patch cables will meet CMBE standards for appearance, neatness, cabling dressing, etc.
- Provide on-site assistance, as needed, to resolve problems with the network after installation.
- At the completion of each installation coordinate, and participate in, an on-site Quality Assurance check with the Information Systems & Support Department.
- Test all components that rely on the newly installed equipment to verify everything is working properly.
- All QA visits must be completed prior to submitting an invoice to CMBE.
- Provide a 90 day (calendar days) warranty period for the system installation.
- Respond on-site to any installation-related issues and/or problems that may occur during the 90 day (calendar days) warranty period.

The following is a general overview of the scope of work required for the Network Electronics installations.

- Visit each site location in preparation for installation, assess the site environment, and identify and communicate any outstanding issues that must be resolved to the Information Systems & Support Department.
- Refer to school [site maps](#) that show approximate locations of Telecommunications Rooms.
- Deliver all needed equipment for the installation.
- Install UPS as needed to meet manufacturer's specifications.
- Install and configure equipment according to manufacturer's specifications in ALL Telecommunications Room's as required. Connect to UPS.
- Switches must be configured properly to pass DNS so that printers function with host name standards.
- Label switch ports to identify ports belonging to each VLAN.
- Label switch ports to identify ports belonging to Kronos.
- Reconfigure Kronos clock with proper static IP address.
- Notify Kronos Project Manager with the new Kronos IP address.
- Label each switch with assigned IP address.
- Install CMBE provided patch cables for all ports as needed.
- Inventory, remove, label and return old equipment/electronics, etc. to the designated CMBE location on the installation completion date.
- Return any unused new equipment to the CMBE Information Systems & Support Project Manager or other CMBE designated location.
- Check revision and upgrade switch code, where needed.
- Update firmware code as needed on new and existing equipment.
- Re-patch UTP to new equipment based on appropriate VLAN.
- Patch Fiber to equipment as needed for connectivity between TR's and Main TR.
- Configure per customer-supplied parameters: IP addressing scheme, routing protocol information, access control lists (password), VLANs, etc.
- Test LAN and WAN network connectivity and verify successful access to LAN Servers, CMBE email, and Internet.
- Provide a spreadsheet showing each piece of equipment's part number, serial number and location within the school and wiring closet.
- Provide the information needed to update the CMBE Visio drawing.
- Dispose of all boxes and packing materials, and ensure that Telecommunications Rooms are left clean.
- Ensure the newly installed equipment, cabling, and patch cables will meet CMBE standards for appearance, neatness, cabling dressing, etc.
- Confirm that all network end point devices that could be affected function properly, including but not limited to computers, printers, network copiers, HVAC, security cameras, EMS, static ip setups like weatherbug, etc.
- Provide on-site assistance, as needed, to resolve problems with the network after installation.
- At the completion of each installation coordinate, and participate in, an on-site Quality Assurance check with the Information Systems & Support Department.
- Test all components that rely on the newly installed equipment to verify everything is working properly.
- All QA visits must be completed prior to submitting an invoice to CMBE.
- Provide a 90 day (calendar days) warranty period for the system installation.
- Respond on-site to any installation-related issues and/or problems that may occur during the 90 day (calendar days) warranty period.

## THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

### **Procurement Statement of Non-Preference**

It is the intent of The Charlotte-Mecklenburg Board of Education to procure a product in the size, quality, and parameters of the following specifications. Sometimes, for facilitation of bidding/quoting procedures only, a certain manufacturer, product, or vendor will be utilized to help streamline this process. However, The Charlotte-Mecklenburg Board of Education invites and encourages all other qualified bidders to submit equivalent bids/quotes. The primary purpose is to ensure that no interested party is excluded or limited from the bidding/quoting process. All bids are evaluated equally, based on but not limited to the following criteria:

- # Prices offered
- # The quality of the equipment offered
- # The general reputation and performance capabilities of the bidders
- # The substantial conformity with the specifications and other conditions set forth in the request for bids/quotes
- # The suitability of the equipment for the intended use
- # The personal or related services needed
- # Transportation charges
- # Location and availability of service and repair facilities and personnel
- # References provided for proposed equipment
- # Demonstration of proposed equipment, if required
- # The dates of delivery and performance
- # Such other factor(s) deemed pertinent or peculiar to the purchase in question which, if controlling, shall be made a matter of record.

All bids/quotes submitted should be as closely sized, equipped, etc. to the desired specifications. Any exceptions to the specifications will be evaluated based on the best interest of The Charlotte-Mecklenburg Board of Education.

## AWARD CRITERIA

While price is the major consideration, CMBE will consider other criteria in evaluating these proposals. The point values associated with the award criteria are:

Factor	Weight	Score	Notes
Price of the goods or services	25		
Prior E-Rate experience	15		
Prior CMBE billing and/or invoicing experience and meeting all prior RFP requirements	15		
Prior CMBE delivery & project management experience and meeting all prior RFP requirements	15		
Local dedicated service and/or support, within 50 mile radius of Charlotte, NC	15		
Qualifications and references including school districts within North Carolina and/or manufacturers	15		
<b>Total</b>	<b>100</b>		

It is the Offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned as **Submittal #2**.



## SUMMARY OF COSTS (Submittal #3)

For the schools identified below, provide the per school breakdown of the installation of the Cisco or equivalent required voice equipment, network electronics, UPS and other related equipment. Please note that there will be additional patch cables to be installed in addition to the numbers listed in the summary spreadsheet. Total each school's installation costs and then total the TOTAL INSTALLATION COST column. Please note that if quantities are reduced CMBE will be requesting an updated reduced quote.

**Note:**

- The complete list of equipment to be installed for Bid 163-1270 is located at [www.cms.k12.nc.us/erate](http://www.cms.k12.nc.us/erate). The installation of Access Points is not included in this RFP.
- The typical school currently has a combination of the following equipment:
  - Head end switch (3750)
  - Switch (2960)
  - 2911 or 2921 Gateway
  - Miscellaneous UPS Equipment
  - Miscellaneous cables

Site Name	Grade	Voice Equipment Installation Cost	Network Equipment Installation Cost	UPS and other related equipment Installation Cost	TOTAL INSTALLATION COST
Albemarle Road Elementary	E				
Albemarle Road Middle	M				
Allenbrook Elementary	E				
Ashley Park Elementary	E				
Berryhill Elementary	E				
Billingsville Elementary	E				
Briarwood Elementary	E				
Bruns Avenue Elementary	E				
Cochrane Middle	M				
Devonshire Elementary	E				
Druid Hills Elementary	E				
Eastway Middle	M				
First Ward Elementary	E				
Hidden Valley Elementary	E				
Highland Renaissance Academy	E				
Martin Luther King Jr. Middle	M				
Merry Oaks Elementary	E				
Montclair Elementary	E				
Nations Ford Elementary	E				
Oakdale Elementary	E				
Pinewood Elementary	E				
Reid Park Elementary	E				
Sedgefield Elementary	E				
Sedgefield Middle	M				
Shamrock Gardens Elementary	E				
Statesville Road Elementary	E				

Sterling Elementary	E				
Thomasboro Elementary	E				
Walter G Byers Elementary	E				
West Charlotte High	H				
Westerly Hills Elementary	E				
Winding Springs Elementary	E				
Windsor Park Elementary	E				
Winterfield Elementary	E				
				GRAND TOTAL	

1. Ineligible Items

Are any E-Rate ineligible services included in the proposed installation pricing? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, list the ineligible items in the following chart, and include associated costs.

Ineligible E-Rate Items	Cost

**> End of this submittal.**

**SERVICE RESPONSES**  
**(Submittal #4)**

Respond to each item. If necessary, enclose additional information or documentation.

---

1. Provide a comprehensive Scope of Work document which details your company's approach to the work required in this RFP. Include the number of project managers and technicians you would assign to this project.

---

2. Provide a comprehensive detail of the responsibilities your project manager(s) will assume and how much time the project manager(s) will be dedicated to the project requirements of this RFP.

---

3. List and attach copies of all current Cisco or equivalent certifications or work experience held by all employees who will be assigned to this project who have been trained and certified on the installation, service, and support of Cisco or equivalent network equipment described in this RFP as **Submittal #5**.

---

4. Describe any experience(s) your company has had with Cisco or equivalent electronics installations which were similar in size, scale, function, and character to this RFP.

---

5. Provide three (3) references of customers for whom you have successfully installed Cisco or equivalent electronics, especially work performed in like-sized K-12 school systems.

---

6. Provide a company profile including services offered, location, years in business, and number of employees.

---

**> End of this submittal.**

**EXECUTION OF PROPOSAL  
(Submittal #6)**

**1. Agreement**

By signing this proposal, the Offeror agrees to the following items. Initial each line item below for acceptance.

#	Item	Initial Below
1	This proposal is signed by an authorized representative of the firm.	
2	Offeror has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.	
3	The Offeror understands the scope and requirements of this RFP and has included all labor costs, direct and indirect, in the proposed cost.	
4	The cost and availability of all equipment, materials, and supplies, if needed, associated with performing the services described herein have been determined and included in the proposed cost.	
5	Offeror is knowledgeable of the E-Rate program, understands the issues of a two-tiered billing system, and has up-to-date E-Rate Service Provider Certifications.	
6	Offeror will list, price, and invoice separately any services that are not E-Rate eligible.	
7	Offeror will be responsible for all warranty issues related to goods and services provided during the factory warranty period if applicable.	

**2. Authorization**

In compliance with this RFP, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 90 days from the date of the opening, to furnish the goods or services as stated in this RFP.

#	Item	Provide Information
1	Company Name	
2	Address	
3	City, State, Zip	
4	Telephone Number	
5	Fax Number	
6	E-mail Address	
7	Federal Identification Number	
8	E-Rate SPIN Number	
9	FCC Registration Number	

BY \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name) COMPANY \_\_\_\_\_

=====

ACCEPTANCE OF PROPOSAL

**(Charlotte-Mecklenburg Board of Education)**

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**THIS PAGE MUST BE SIGNED AND INCLUDED IN THE BID PROPOSAL.**

Unsigned proposals will not be considered.

## FINAL CHECKLIST

1. Sealed proposal information should be for submitted to:

**Procurement Services**

Charlotte-Mecklenburg Board of Education  
E-Rate RFP 163-1270  
Attn – Gifford Cordova  
4511 Monroe Road, Room 212  
Charlotte, NC 28205

2. Proposals should be submitted **no later than 2:00 pm, February 23, 2012.**

3. The sealed proposal package should be labeled as follows:

**Bid #:** 163-1270

**Proposal for:** DATA and WLAN ELECTRONICS INSTALLATIONS

**Opening Date:** February 23, 2012  
2:00 PM

4. Each applicant must submit **3 complete** copies of the bid proposal:
  - a. One (1) copy marked *Original*.
  - b. One (1) copy marked *Copy with signatures*.
  - c. One (1) copy (Microsoft Word format) on a CD, labeled with the Company Name, RFP #, RFP Description, and Date of RFP.
5. Each sealed bid proposal must include the following completed proposal submittals:

Proposal Submittal #	Item Description
1	Cisco or equivalent Distributor Support Letter
2	Copy of Addenda (when applicable)
3	Summary of Costs
4	Service Responses
5	Cisco or equivalent certifications or work experience held by all employees who will be assigned to this project
6	Execution of Proposal
7	M/W/SBE form, pg. 15

## **Minority, Women, Small Business Enterprise Information**

Charlotte-Mecklenburg Board of Education (CMBE) promotes full and equal access to business opportunities with Charlotte-Mecklenburg Schools (CMS). Minority-owned, women-owned, and small business enterprises (collectively “M/W/SBE”) as well as other responsible vendors shall have a fair and reasonable opportunity to participate in CMS business opportunities.

Prime suppliers (i.e., those who deal directly with CMS) should support Charlotte-Mecklenburg School’s M/W/SBE Program by making an effort to engage minority, women, and/or small businesses as subcontractors for goods and services for CMS to the extent available. Prime supplier’s spending with M/W/SBE subcontractors constitutes Second Tier supplier diversity spending by CMS and the results of Second Tier spending is tracked within our program.

Each bidder or respondent to the solicitation shall submit with their bid the M/W/SBE Utilization Form. A listing of M/W/SBE firms and the CMS M/W/SBE guidelines may be obtained by contacting the M/W/SBE Administrator at 980-343-8638.

**Failure to complete and submit the M/W/SBE Utilization Form may render bid or proposal response invalid.**


### For: Purchases of Goods and Services

	(Bid Description)	\$
(Bid Number)		(Dollar Amount of Bid)

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below.

Name and Address	*M/W/SBE Category	Work description	Dollar Value

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.



SEAL

Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
 Notary Public \_\_\_\_\_  
 My commission expires \_\_\_\_\_

# **THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION REQUEST FOR PROPOSAL INSTRUCTIONS**

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.
2. **COMPETITIVE OFFER:** Pursuant to the provision of G.S. 143-54, and under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of either Federal or North Carolina antitrust laws.
3. **ORAL EXPLANATIONS:** The Charlotte-Mecklenburg Board of Education shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
6. **COST FOR PROPOSAL PREPARATION:** Any cost incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; The Charlotte Mecklenburg Board of Education will not reimburse any offeror for any costs incurred prior to award.
7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 60 days. Although the contract is expected to be awarded prior to that time, the 60 day period is requested to allow for unforeseen delays.
8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
9. **CONFIDENTIALITY OF PROPOSALS** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the The Charlotte-Mecklenburg Board of Education, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of The Charlotte-Mecklenburg Board of Education, from contract award. Only discussions authorized by The Charlotte-Mecklenburg Board of Education are exempt from this provision.
10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of The Charlotte-Mecklenburg Board of Education when received.
11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina Law.



14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 The Charlotte-Mecklenburg Board of Education invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **DECLINE TO OFFER:** Any firm which receives a copy of the RFP but which declines to make an offer is requested to send a written "Decline to Offer" to the issuing office. Failure to respond as requested may subject the firm to removal from consideration on future requirements.
16. **PROTEST PROCEDURES:** When an offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within (10) ten consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Offerors may call the Procurement Official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, The Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.

# THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

## **STANDARD TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and The Charlotte-Mecklenburg Board of Education ("CMBE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CMBE with respect to the purchase by CMBE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CMBE shall control. This Order constitutes an offer by CMBE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to CMBE shall be deemed accepted by or binding on CMBE. CMBE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CMBE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CMBE are subject to correction.
2. **QUANTITIES:** Shipments must equal exact amounts ordered unless otherwise agreed in writing by CMBE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. **PRICES:** If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CMBE the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CMBE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
4. **INVOICES:** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to CMBE's accounts payable department with a copy to the CMBE Project Coordinator.
5. **FREIGHT ON BOARD:** All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
6. **TAXES:** Applicable taxes shall be invoiced as a separate item.
7. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
9. **DELAY IN SHIPMENT:** Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.
10. **RISK OF LOSS:** Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.
11. **REJECTION:** All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

12. **COMPLIANCE WITH ALL LAWS:** Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.
13. **REGISTERED SEX OFFENDERS:** Contractor acknowledges that CMBE Policy ADDA, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMS property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMS Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMS Property.
14. **WARRANTIES:** Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
15. **INDEMNIFICATION:** Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
16. **INSURANCE:** Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management ("DIRM"), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.
17. **TERMINATION FOR CONVENIENCE:** In addition to all of the other rights which CMBE may have to cancel this Order, CMBE shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 10 days notice in writing from CMBE to Seller. If the Contract is terminated by CMBE in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CMBE will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.
18. **TERMINATION FOR DEFAULT:** CMBE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CMBE law or equity, CMBE may procure upon such terms as CMBE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CMBE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

19. **CONTRACT FUNDING:** It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
20. **ACCOUNTING PROCEDURES:** Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
21. **IMPROPER PAYMENTS:** Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.
22. **CONTRACT TRANSFER:** Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.
23. **CONTRACT PERSONNEL:** Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.
24. **KEY PERSONNEL :** Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).
25. **CONTRACT MODIFICATIONS:** The Contract may be amended only by written amendment duly executed by both CMBE and Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.
26. **RELATIONSHIP OF PARTIES:** Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.
27. **ADVERTISEMENT:** The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.
28. **NONDISCRIMINATION:** During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
29. **CONFLICT OF INTEREST:** Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
30. **GRATUITIES TO CMBE:** The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.
31. **KICKBACKS TO SELLER:** Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.
32. **MONITORING AND EVALUATION:** Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE property and

from performing services under the Contract following provision of notice to Seller of the reasons for CMBE's dissatisfaction with the services of Seller's employee.

33. **FINANCIAL RESPONSIBILITY:** Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
34. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
35. **INSPECTION AT SELLER'S SITE:** CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
36. **CONFIDENTIAL INFORMATION:** Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.
37. **INTELLECTUAL PROPERTY:** Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
38. **NO PRE-JUDGMENT OR POST-JUDGMENT INTEREST:** In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.
39. **BACKGROUND CHECKS:** At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.
40. **MEDIATION:** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
41. **NO THIRD PARTY BENEFITS:** The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.

42. **FORCE MAJEURE:** If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.
43. **OWNERSHIP OF DOCUMENTS:** All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.
44. **STRICT COMPLIANCE:** CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
45. **GENERAL PROVISIONS:** CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.
46. **CONTRACT SITUS:** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.